

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

RATE ADJUSTMENT DUE TO EXTRAORDINARY  
OR EXCEPTIONAL CIRCUMSTANCES

Docket No. R2010-4R

STATEMENT OF THE UNITED STATES POSTAL SERVICE  
REGARDING ITS EXIGENT REQUEST  
(November 7, 2011)

In Order No. 937, the Postal Regulatory Commission directed the United States Postal Service “to file a statement indicating whether and how it wishes to pursue its Exigent Request, as described in Order No. 864, no later than November 7, 2011.”<sup>1</sup> This Statement responds to that directive. The Postal Service has determined that it will proceed with its Exigent Request.<sup>2</sup> The discussion below outlines how the Postal Service plans to pursue the Request.

Background

Section 3622(d)(1)(E) of title 39 permits postal rates to be “adjusted on an expedited basis due to either extraordinary or exceptional circumstances,” where “such adjustment is reasonable and equitable and necessary to enable the Postal Service, under best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States.”<sup>3</sup> In Order No. 547, the Commission focused on the “due to

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<sup>1</sup> Order No. 937, Docket No. R2010-4R (Oct. 31, 2011), at 9.

<sup>2</sup> Should legislation relating to the Postal Service be enacted and signed into law before the Commission rules on the Request, the Postal Service may reconsider its decision to proceed with the Request, after determining the financial impact of that legislation.

<sup>3</sup> 39 U.S.C. § 3622(d)(1)(E).

either extraordinary or exceptional circumstances” language and did not reach the question of whether the requested increase was “reasonable and equitable and necessary.”<sup>4</sup> Specifically, the Commission found that “the [2008-2009] recession and its impact on the Postal Service constitute an extraordinary or exceptional circumstance,”<sup>5</sup> but found that the Postal Service’s evidence had not demonstrated that the proposed rate increases were “due to” that exigent circumstance.<sup>6</sup>

On appeal, the United States Court of Appeals for the District of Columbia Circuit rejected the Commission’s interpretation of “due to” and remanded to the Commission to “explain[ ] the extent of causation the Commission requires the Postal Service to demonstrate between the exigent circumstance’s impact on Postal Service finances and the proposed rate increase.”<sup>7</sup> On remand, the Commission issued the following interpretation of “due to”:

The Commission concludes that “due to” should be interpreted to require a close causal nexus. In particular, the Commission interprets the causal nexus of “due to” to mean that:

- (1) Exigent rate adjustments are permitted only if, and to the extent that, they compensate for the net adverse financial impact of the exigent circumstances;

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<sup>4</sup> Order No. 864, Docket No. R2010-4R (Sept. 20, 2011), at 7-8.

<sup>5</sup> Order No. 547, Docket No. R2010-4 (Sept. 30, 2010), at 49. The Commission reiterated this finding in Order No. 864, at 29 (“[t]he Commission reiterates its finding in Order No. 547 that the 2008-2009 recession and its impact on postal volumes constituted exigent circumstances”), and in Order No. 937, at 8 (“the 2008-2009 recession and the impact of that recession on postal volumes ... were ‘extraordinary or exceptional circumstances’ under section 3622(d)(1)(E)”).

<sup>6</sup> Order No. 547, at 58-65.

<sup>7</sup> *U.S. Postal Service v. Postal Regulatory Comm’n*, 640 F.3d 1263, 1264 (D.C. Cir. 2011).

- (2) To quantify the net adverse financial impact of the exigent circumstances, the Postal Service does not have to quantify such impact with absolute precision, but must:
  - (a) Under the circumstances presented, justify its quantification through supportable methods commensurate with the amount of the proposed adjustment; and
  - (b) Demonstrate that the amount of the proposed adjustment does not exceed the net adverse financial impact of the exigent circumstances.<sup>8</sup>

In light of this interpretation, and because the Commission did not reach the “reasonable and equitable and necessary” prongs of section 3622(d)(1)(E) in Order No. 547, resolution of the Request necessitates: (1) quantifying the net adverse financial impact of the 2008-2009 recession on postal volumes through supportable methods; (2) determining that rate increases equaling the quantified net adverse financial impact would be necessary, under best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States;<sup>9</sup> and (3) identifying a set of rates that are equal to or less than the quantified net adverse financial impact, and that are “reasonable and equitable as among types of users of market dominant products.”<sup>10</sup>

#### Plan for Pursuing Exigent Request

To accomplish the three steps set forth above, the Postal Service will do the following. As to the first step of quantification, the Postal Service will conduct the

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<sup>8</sup> Order No. 864, at 2-3.

<sup>9</sup> *Cf.* 39 C.F.R. § 3010.61(a)(4).

<sup>10</sup> *Cf. id.* at § 3010.61(a)(5).

“Method 5” analysis that it previously presented in its Initial Comments in this docket,<sup>11</sup> meaning that it will perform a “source of change” analysis to determine what portion of each market dominant product’s volume losses are attributable to the recession, and then multiply that portion of the volume loss by each product’s unit contribution. The sum of these calculations will represent a lower-bound estimate of the net adverse financial impact of the recession on postal volumes.<sup>12</sup> To facilitate this analysis, the Postal Service moves that the Commission incorporate into the record in this docket the Postal Service’s responses to interrogatories GCA/USPS-T2-1 and 2 in Docket No. N2010-1, as well as the Excel worksheets attached to the responses.<sup>13</sup> The Postal Service will also present testimony explaining the analysis contained in those Excel worksheets and calculating the lost contribution caused by the recession-related volume losses.

As to the second step, the Postal Service’s July 2010 Exigent Request, as well as its various pleadings since then (including its Initial Comments on remand), fully addressed this issue. However, the Postal Service may submit testimony or further legal analysis updating its prior submissions. Additionally, the Postal Service is prepared to respond to any inquiry the Commission may have or to supplement the

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<sup>11</sup> Initial Comments of the United States Postal Service Regarding Court Remand, Docket No. R2010-4R (July 25, 2011).

<sup>12</sup> One reason why this sum is a lower-bound estimate is that it does not account for the tendency of attributable costs, during periods of falling volumes, to fall more slowly than volumes. A full explanation of why the sum is a lower-bound estimate appears in the Postal Service’s Initial Comments, *id.*, at 47-51.

<sup>13</sup> See Responses of the United States Postal Service to GCA Interrogatories (GCA/USPS-T2-1—2), Redirected from Witness Corbett, Tr. 7/1759-64, Docket No. N2010-1.

information it has already provided if the Commission believes that additional information is required.

Finally, as to the third step, the Postal Service notes that it stated in its Initial Comments that it would not challenge a net adverse financial impact quantification of at least \$2.3 billion and that it will provide a pricing proposal keyed to that amount, should the Commission so desire.<sup>14</sup>

If the plan outlined above is acceptable to the Commission, the Postal Service will proceed with filing its witness statements and any further legal analysis by November 21st.<sup>15</sup> Should the Commission find that any witness statement or other documentation is lacking material information or needs clarification, the Commission is encouraged to exercise its authority under 39 C.F.R. §§ 3010.62, 3010.65, and other similar provisions of its rules of practice, to request additional or clarifying information from the Postal Service.

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<sup>14</sup> As documented in the Postal Service's Initial Comments, *supra* note 11, net adverse financial impact quantifications of greater than \$2.3 billion are fully, empirically justified. However, given the sixteen months that have elapsed on this docket, the rate design submitted in the Postal Service's July 2010 Exigent Request is now unworkable. Any new rate design would have to be harmonized with the rates implemented in April 2011 and the rates recently proposed in Docket No. R2012-3. The Postal Service is willing to submit a proposal as to how this harmonization should be accomplished, should the Commission so order.

<sup>15</sup> In accordance with Order No. 864, the Postal Service is filing a separate motion today requesting leave to supplement the record with the materials identified in this Statement.

Respectfully submitted,

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